Supreme Court, U.S.
FILED

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No. 97-_____

In The
Supreme Court Of The United States

October Term, 1996

PAUL JENNINGS HILL,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI (WITH APPENDIX)

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QUESTION PRESENTED

Whether Hill's Sixth and Fourteenth Amendment rights to counsel were violated when the judge knew Hill's only defense to two counts of premeditated murder was the affirmative defense of justification, but failed to inquire if Hill had any knowledge of how to present that justification defense which required extensive, legal research in order to proffer evidence sufficient to establish the factual predicate, by the skillful use of compulsory process, to prove that complex intricate defense, and whether that failure to inquire violated Faretta v. California, 422 U.S. 806 (1978), which requires a waiver of the right to counsel must be "voluntarily and intelligently" made, Id. at 807; "an intelligent and knowing", waiver, Id. at 809; a "knowing and intelligent" waiver, Id. at 812; the defendant must "competently and intelligently waive his constitutional right to the assistance of counsel", Id. at 814; he must "knowingly and intelligently" waive that right to counsel, Id. at 835, and in addition, the judge failed to follow the more stringent Florida Rule 3.111(d), which requires that:

> (2) a defendant shall not be deemed to have waived the assistance of counsel until...a thorough inquiry has been made into both the accused's comprehension... and...capacity to make an intelligent and understanding waiver

and:

> (3) No waiver shall be accepted if it appears

> that the defendant is unable to make an intelligent and understanding choice because of...the nature or complexity of the case...: [Emphasis added],

particularly where the State filed its motion in limine to preclude the necessity/justification defense on October 14, 1994, which, on October 24, 1994 when set for oral argument, the following occurred within minutes of each other: 1) the State handed its brief to the judge and to Hill in open court, 2) Hill moved for counsel to orally argue to which the State objected, and the judge sustained the State's objection, 3) the State argued its motion which Hill was unable to argue, 4) the judge granted the motion in limine, following which, Hill, at trial, asked no voir dire questions, objected to no voir dire questions asked by the State, waived both of his opening arguments and final closing argument, failed to cross-examine any witnesses, offered no witnesses, failed to offer any exhibits, failed to object to any exhibits, made no requests to charge, took no exceptions to the charge, and finally made a meaningless 67 word comment which resulted in a verdict of two death sentences against Hill, amount to a violation of Hill's Sixth and Fourteenth Amendment rights?

PARTIES

The Petitioner is as follows: Paul Jennings Hill

The Petitioner was a defendant in the State of Florida in both the Circuit Court in and for Escambia County and in the Supreme Court of the State of Florida.

The Respondent is the State of Florida.

The Respondent prosecuted the case in both the Circuit Court in and for Escambia County and in the Supreme Court of the State of Florida.

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No. 97 -

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OCTOBER TERM, 1996

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vs.

THE STATE OF FLORIDA,

Respondent.

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Paul Jennings Hill respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Florida entered in this proceeding on November 27, 1997, rehearing denied March 6, 1997, [A1 - A24] in order to resolve important federal questions concerning the fundamental substantive Sixth Amendment right to counsel as made applicable to the States by the Fourteenth Amendment which judgment conflicts with the relevant decisions of this Court, particularly Faretta v. California, 422 U.S. 806, as applied to the even more stringent Florida Rules of Criminal Procedure, §3.111(d).

DECISIONS BELOW

Hill was charged in two counts of premeditated murder by an indictment on August 9, 1994. On September 26, 1994, a motion for a Faretta hearing and motion to withdraw by the public defender were filed [A25 - A27] and heard on September 27, 1994, [A34 - A155], both motions being granted on September 30, 1994 [A28 - A33]. On October 13, 1994 a supplemental Faretta hearing took place. [A156 - A178]. The State filed a motion in limine to preclude the justification defense on October 14, 1994 [A201 - A206] and a memorandum in opposition to it was filed. The State, at the time of oral argument, October 24, 1994, filed in open court its memorandum in support of its motion in limine and simultaneously handed a copy to Hill [A207 - A225] which was the first time Hill had seen the State's memorandum.

Hill immediately [A179] moved to have Attorney Heuser, who had filed a motion to appear pro hac vice, [A226 - A228] and who had drafted Hill's memo, argue in opposition to the State's motion in limine, the State opposed Heuser's motion and Hill's motion, [A179 - A183] and the judge denied Heuser's motion to appear pro hac vice, and denied Hill's motion [A183] to have Attorney Heuser argue the motion resulting in Hill being denied counsel to argue his critical justification defense. Because he was denied counsel, Hill was not capable of making, nor did he make, any oral argument [A179 - A200] and the judge granted the State's Motion in Limine [A198 - A199] and [A229 - A233] on October 24, 1994.

The jury found Hill guilty in the guilt phase of the trial in less than an hour. In an equally short time in the penalty phase of the case, the jury recommended the death penalty, as Hill was found guilty of two counts of first degree premeditated murder and guilty of shooting into an occupied vehicle. [A231 - A235].

The Supreme Court of Florida, on November 27, 1996, affirmed the judgment of the trial court, with one dissent by Justice Anstead in the penalty phase which correctly criticized the majority's opinion that a statutory aggravator, which requires proof beyond a reasonable doubt, was found, and the case was thus incorrectly decided, as the majority found Hill was <u>not acting with a "pretense"</u> of moral justification, §921.141(5)(i), although it is unquestionable that Hill's motivation was based upon his moral justification in

opposition to abortion.

The Supreme Court of Florida found that the judge constitutionally conducted a Faretta hearing and that the judge correctly determined that Hill had knowingly and intelligently waived his right to counsel; it further found that Florida Rule of Criminal Procedure 3.111(d) had not been violated, as it held that the defense of justification is routine, and it specifically found that:

> As to the nature and complexity of the case, there is nothing particularly complex about the defense of justification or necessity, that would lead us to conclude that Hill was unable to make a fully intelligent and understanding choice to waive counsel under Rule 3.111(d). [A 17].

On December 7, 1996, the Petitioner here, defendant below, moved the Florida Supreme Court for Rehearing which was denied on March 6, 1997 by a revised opinion. [A1 - A24].

JURISDICTION

By an indictment on August 9, 1994, Hill was charged with first-degree premeditated murder, one count of attempted first-degree murder, and one count of shooting into an occupied vehicle. The public defender filed a motion to withdraw and a motion for a Faretta hearing on September 26, 1994, both of which, after a perfunctory hearing on September 27, 1994 were granted on September 30, 1994 [A25 -

A37].

Hill was found guilty as charged in a case where he could not, and was not permitted to, offer his only defense. Hill received two death sentences [A231-A254] an appeal was timely taken based upon the violation of Hill's Sixth Amendment right to counsel, made applicable to the states by the Fourteenth Amendment, that violation based upon an invalid waiver to the right to counsel based upon the criteria set forth in Faretta v. California, 422 U.S. 806 as applied to the even more stringent Florida Rules of Criminal Procedure, §3.111(d).

A timely appeal was taken to the Florida Supreme Court which affirmed the judgment, with the dissent by one judge, on November 27, 1996, a timely motion to reargue was filed on December 7, 1996, [A255 - A277] and the motion for rehearing was denied on March 7, 1997 by the revised opinion of the Supreme Court of Florida [A1 - A24].

Pursuant to Supreme Court rule 13.1, this Petition has been filed within 90 days of the denial of rehearing, and this Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS

The United States Constitution, Amendment VI provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.

The United States Constitution Amendment XIV provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Florida Constitution, Art. I, § 16(a) in pertinent part provides:

> In all criminal prosecutions, the accused shall...have the right...to confront at trial adverse witnesses, to be heard in person, by counsel or both...".

STATUTORY PROVISIONS INVOLVED IN THIS CASE

The Florida Rule of Criminal Procedure, Rule 3.111(d)(2) provides, in pertinent part:

> A defendant shall not be deemed to have waived the assistance of counsel until...a thorough inquiry has been made into <u>both</u> the accused's <u>comprehension</u>... and...capacity to make an intelligent and <u>understanding waiver</u>;

3.111(d) further provides:

> No waiver shall be accepted if it appears

> that the defendant is unable to make an intelligent and understanding choice because of...the nature or complexity of the case...: [Emphasis added]

Florida Statute 776.012 (1993) provides that one is justified in using deadly force:

> ...only if he reasonably believes that such force is necessary to prevent imminent death...to... another...

§921.141(5)(i) holds that one of the factors that could be considered in aggravation is that:

> the capital felony was a homicide and was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. [Emphasis added]

STATEMENT OF THE CASE

In this case the Supreme Court of Florida has affirmed the judgment of the trial court in which Hill was found guilty of two counts of first-degree premeditated murder, one count of attempted first-degree murder, and one count of shooting into an occupied vehicle (Doc. 1). The error committed by the Florida Supreme Court effectively overrules Faretta v. California, supra and the Florida Rules of Criminal Procedure §3.111(d). Pursuant to

Faretta, the waiver of the right to counsel must be "voluntarily and intelligently" made. Id. at 807.

The Record of the judge's Faretta inquiry is presented in its entirety in the [A34 - A200; A278 - A299] is absolutely devoid of any inquiry whatsoever of Hill by the Judge which in any way satisfies the criteria as set forth in Faretta, supra, and the more stringent Florida Rule 3.111(d). There simply is no basis that Paul Jennings Hill made a knowing, intelligent, understanding and comprehensive waiver of his Sixth Amendment right to counsel as set forth in Faretta, nor is there any evidence in the Record that he made an intelligent and understanding choice because of the nature and complexity of the case and more particularly of the justification defense as required by Rule 3.111(d).

At trial, Hill asked no voir dire questions, objected to no voir dire questions asked by the State, waived his opening statement in the guilt phase of the trial, failed to cross-examine any witnesses, failed to offer any exhibits, failed to object to any exhibits, offered no witnesses, failed to object to any questions by the State of the witnesses, made no requests to charge, took no exceptions to the charge, although he attempted to articulate to the judge that he wanted to present the justification defense, the judge failed to explain why he was not permitted to do so. Thence, in response to the judge's critical question, Hill rested without offering any evidence; he waived his opening argument and rebuttal argument in the penalty phase of the case. Instead,

Hill's only substantive comment consisted of 67 words, which, due to Hill's failure to understand that which he purportedly "knowingly and intelligently" waived, was based on no evidence submitted to the jury, and thus it was worse than no statement at all.

On appeal, Hill moved to proceed pro se. The Florida Supreme Court ordered Judge Elzie Sanders to conduct a Faretta hearing to determine if Hill was able to proceed pro se. The Florida Supreme Court ruled, and this ruling is a judicial admission, by the Florida Supreme Court, that Hill could not waive the benefit of his Sixth Amendment right to counsel, [A299 - A302] holding:

> Counsel for the appellant is hereby advised that in order for the appellant to receive a meaningful appeal, the Court must have the benefit of an adversary proceeding with diligent appellant advocacy addressed to both the judgment and the sentence. [Slip Copy 1995 WL 368413, No. 1(Fla.)]. [A301].

Note that Judge Sanders approved out of state counsel [A303].

On appeal, the Faretta and Sixth and Fourteenth Amendment arguments together with Fla. R. of Cr. P. 3.111(d) were pursued.

On page two of its opinion, [A5], the Supreme Court of Florida held: "To achieve a valid waiver, a defendant must

be made aware of the dangers and disadvantages of self-representation, so that the defendant 'knows what he [or she] is doing', and...the choice is made with eyes open". The undersigned argued to the Florida Supreme Court that Hill was not afforded such a choice as the Record proves the judge did not explain to Hill what it was that Hill was waiving nor did he know how to present evidence on his only defense of justification. The Petitioner did not know how to use the legal process to present evidence on his only defense of justification. But more egregiously, as hill has argued, his rights to counsel were violated when he was precluded from arguing the justification defense by the trial judge's granting of the State's motion in limine which effectively precluded Hill from obtaining counsel to argue on his behalf literally minutes after the State presented Hill with its memorandum of law, and, effectively made sure Hill had to lose the case because he could not present the justification defense.

The Record (A34 - A200 and A278 - A299) proves the trial judge did not make Hill aware of the dangers and disadvantages of self-representation in this intricate justification defense case. When the Supreme Court of Florida holds: "In this case, the trial judge conducted an exhaustive inquiry before concluding that Hill's waiver was valid.", it is error, and the Record contradicts that holding. The Record is devoid of any such "exhaustive inquiry" made of Hill by the judge.

The most telling portion of the opinion below is at page A 11 of the Appendix:

> The State cites no Florida Appellate Court that has ruled on the subject of whether the defense of necessity or justification, whether it be common law or statutory, is available to a defendant whose crime was committed in opposition to abortion.

However, Statute 776.012 creates the justification defense to a charge of murder, which defense Hill desired to present in his case. He was unable to do so because he had no counsel. If the above quotation from the opinion does not prove that Hill needed, and could not waive, his right to counsel and that Hill was deprived of his Sixth Amendment right to counsel, then the new test in this country will be that the waiver of the Sixth Amendment right to counsel is mechanical, and that tears Faretta asunder.

The Court below states:

> However, the law outside this state, of which there is a significant body, is virtually unanimous on the subject. In every appellate court found to have considered the issue the defendants were precluded, as a matter of law from asserting the necessity or justification as defense to trespass violations committed in protest of abortion. [Emphasis added]. (A11)

That sentence equally illustrates the need for the defendants assistance of counsel. There is not a pro se in the United States that could research that issue, and, therefore the Sixth Amendment right to counsel, simply cannot be waived in such an intricate justification defense such as the one involved in this case. Indeed, the Florida Supreme Court treats the defense of necessity and justification as synonyms, which they are not.

There are two distinct affirmative defense statutes in Florida, necessity and justification, and the statute which Hill desired to use, and would have used if he had counsel, is 776.012 which provides that one is justified in using deadly force:

> ...only if he reasonably believes that such force is necessary to prevent imminent death...to... another....

This is not a statute that a lay person may utilize by compulsory process in this case where the application of the law to facts which must be produced only by the expertise of an experienced lawyer, as the Petitioner argued in the court below. That 1993 statute referred to in the Florida Supreme Court's opinion on page [A 12] is admitted by the Court below not to be identical to the defense of necessity. Can one seriously claim that Hill was interrogated as to waiving his right to counsel and that he knowingly and intelligently gave up such an intricate legal defense which requires research of the case law of the 50 states and all of the federal jurisdictions as

well. The answer must be in the negative.

Admitting that there was no Florida cases on the subject, the Florida Supreme Court went to other courts for cases on the necessity defense, which cases do not apply to the justification defense. The Florida Supreme Court clearly erred in holding that Hill was not acting with a pretense of moral justification, because the ill-fated 67 word "closing argument" by Hill proves that indeed he was acting solely and completely with moral justification:

> You have a responsibility to protect your neighbor's life and to use force if necessary to do so. In an effort to suppress this truth, you may mix my blood with the blood of the unborn and those who have fought to defend the press. However, truth and righteousness will prevail. And may God help you to protect the unborn as you would want to be protected.

Having precluded the use of the justification defense, and to permit Hill to make that 67 word comment, the trial court erred and the Florida Supreme Court erred, in holding that Hill's waiver of counsel satisfied Faretta and Rule 3.111(d). That comment to the jury clearly shows Hill had no knowledge whatsoever, nor the reason to or ability to possess the knowledge, of how to present the factual predicate necessary in order to proffer evidence to convince a jury that his actions were justified,

presents substantial evidence that Hill did not and could not have "knowingly and intelligently waived" that which he did not and could not know. You can't know what you don't know, and you can't waive that which you don't know.

As stated, the trial court further erred in concluding that Hill was not acting with a "pretense of moral justification" by not allowing him to present that defense with the assistance of counsel. As set forth by Justice Anstead in the dissent, "Section 921.141, Florida Statutes (1995), an aggravator must be established by proof beyond a reasonable doubt. As he further states: "obviously, the finding of one or more of the aggravators or mitigators is critical to any penalty analysis".

§921.141(5)(i) holds that one of the factors that could be considered in aggravation is that:

> the capital felony was a homicide and was committed in a cold, casualty and premeditated manner without any pretense of moral or legal justification. [Emphasis added]

The trial court was in error when it found this aggravator proven beyond a reasonable doubt and that error is compounded by the Florida Supreme Court's decision. It cannot be seriously questioned that Paul Jennings Hill acted under a pretense of moral justification, i.e., his moral opposition to abortion, and that, therefore precluded the application of that aggravator.

The Court contradicts itself on the

aggravator issue when it held [A15 - A16] of the opinion:

> Hill does not specifically contest any of the aggravating circumstances fund by the judge, although he inferentially suggests that the murders did not meet the criteria for being cold, calculated and premeditated because they were committed with the pretense of moral justification.

Of course Hill contests that issue-read his 67 word sound-bite!

This issue was squarely raised by Hill on appeal to the Florida Supreme Court, as Justice Anstead eloquently analyzed and found that Hill had argued a moral justification as shown by the 67 word sound-bite quoted in the majority opinion.

Again, it is not the test that the killer be morally or legally justified under the aggravator situation. The statute only requires that he have "some pretense of justification". Therefore, the Court was in error. In addition, as articulated by Justice Anstead, the majority erred in concluding that it was proven beyond a reasonable doubt that Hill acted <u>without any pretense of moral or legal justification</u>.

Hill's failure to offer any mitigating evidence of his otherwise exemplary life, which an attorney certainly would have if Hill had been represented, but because he was unrepresented, he was deprived of

that chance. The jury inquired of the judge [A304] "If jury recommends 'life imprisonment without parole', does the law allow in future years the defendant can be paroled"?, What a telling question!

That is further proof that Hill should not have been permitted to try to present this case himself. If that jury, with absolutely no help from Hill or anyone else, and, despite the non-performance from the defendant Hill, came that close to life with imprisonment, what would it have done with counsel to aid Hill in his defense, both as to the guilt and to the penalty phase of the trial?

There was a further egregious occurrence which mandated a mistrial, and now mandates a reversal of the judgment. When the State commented to the entire jury panel:

> Do all of you understand that the jury's only rule is to determine the facts and to apply them to the law and come back with a verdict, <u>it is the judge's decision to impose the decision of guilt or the decision of punishment. That is the judge's decision. It is not the jury's decision.</u> [Emphasis added]

Isn't that a comment that would have had any lawyer demanding a mistrial? Yet, Hill needed, but did not get a lawyer, and the <u>judge</u> never admonished the State, nor did the judge immediately correct this illegal, highly prejudicial,

statement by the prosecutor.

REASONS FOR GRANTING THE WRIT

The Decisions of the Circuit Court affirmed by the Supreme Court of Florida has so emasculated the case of Faretta v. California, 422 U.S. 806, in violation of the Sixth Amendment, made applicable to the states by the Fourteenth Amendment, that there is a dramatic, graphic, illegal change in the law whereby, if this decision is allowed to stand, it will be cited countrywide for the holding that the waiver of a defendant's Sixth Amendment right to counsel is a mechanical act.

In U.S. v. Harrison, 451 F. 2d, 1013 (1971), a lawyer who was permitted to try a case by himself when he had very little trial experience was found to have had his Sixth Amendment right to counsel violated because: the transcript was only 66 pages long; the cross-examination was totally inadequate [Hill had none]; the motion at the end of the trial was feeble, [Hill made none]; there were no pretrial motions [Hill's written motion was not permitted to be argued]; Harrison offered no evidence [neither did Hill]; he made no opening or closing statement [Hill was worse with three waivers of statements to the jury, then said 67 words which meant nothing]; Harrison had little knowledge of procedure and means to put on a defense [Hill had none]. As Harrison was found to be an invalid waiver, so should Hill's. As held by the federal court in Florida in Reilly Petitioner v. State of Florida, 847 Fed. Supp. 951 at 960:

No waiver will be accepted

> until the Court finds that the defendant is able to make an intelligent and voluntary choice...

That is precisely what did not happen in the instant case--the waiver should not have been accepted.

It is submitted that the Sixth Amendment right to counsel in: Powell v. Alabama, 287 U.S. 45, 50 [denial of the right to counsel with the accustomed incidents of consultation and opportunity of preparation for trial]; Gideon v. Wainwright, 372 U.S. 335, 342-343 [the right to the aid of counsel is of fundamental character] and 344-345, [the articulate words of Mr. Justice Southerland quoted from Powell, supra, as to the necessity of counsel]; Johnson v. Zerbst, 304 U.S. 459, 463 ["even the intelligent and educated layman has small and sometimes no skill in the science of the law"]; Argersinger v. Hamlin, Sheriff, 407 U.S. 25, 28 [is particularly appropriate in the instant case with the use of compulsory process]; Douglas v. California, 372 U.S. 353, 356 [the denial of the right to counsel cannot amount to a denial of due process]; Adams, Worden v. U.S. Exrel McCann, 317 U.S. 269, 277 [requiring an exhaustive inquiry before counsel can be dispensed with]; Glasser v. U.S., 315 U.S. 60, 70-71 [is particularly appropriate as the person denied the right to counsel was a lawyer]; VonMoltke v. Gillies, 332 U.S. 708, 720-731, [particularly page 728 commenting upon the difficulty of the case]; and Godinez, Warden, v. Moran, 509 U.S. 389, 392, 401 n.12 [where the Record must show the waiver proves the severe consequences of any waiver]; will be so

emasculated that the Sixth Amendment right to counsel will no longer exist.

Pursuant to Faretta, and its progeny, supra, the waiver must be "an intelligent and knowing" waiver, Id. 809; the defendant must "competently and intelligently waive his constitutional right to the assistance of counsel", Id. 814; he must "knowingly and intelligently" waive that right to counsel, Id. 835; the waiver of the right to counsel cannot be a "mechanical exercise", Id. 815-816. Further, the more strict Florida Rules of Criminal Procedure, Section 3.111(d) mandates that the judge may not accept a waiver of counsel until and unless "a thorough inquiry [be] made into both the accused's comprehension and understanding waiver, and (3) "no waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of the...nature and complexity of the case. [Emphasis added]. Clearly, the most complex and only possible intricate defense is justification in this case. That defense requires comprehensive legal research to proffer sufficient evidence, by skillfully utilizing compulsory legal process, to establish the factual predicate to prove that intricate defense. Florida Statutes (1993) 776.012 states that a person is justified in the use of deadly force if he reasonably believes that such force is necessary to prevent imminent death...to...another.[1]

---

[1] The justification defense is an affirmative defense which can only be utilized, particularly in the instant

case, by careful, legal research to determine what facts must be proffered, by the use of compulsory process, to establish the factual predicate in order to permit the justification defense to be offered at trial. Some of the compulsory legal process includes:

Discovery must be filed in order to obtain each current employee of the Center, so that each employee may be inquired of as to any illegal, improper, violations of statutes, regulations, policy, or the institution of directives which may lead to admissible evidence; so too, a list of former employees for the prior 10 year period must be obtained so that proper inquiry may be made of them which may lead to admissible evidence; discovery of employees of the state regulatory agency having jurisdiction over the Center must be obtained for the same purposes; former employees within the last 10 years of that state regulatory agency having jurisdiction over the Center must be obtained for the same purposes; current employees of the local regulatory agency must be ascertained by that process for the same purpose; former employees, a period of 10 years of the local regulatory agency must be obtained so that proper inquiry may be made of them, which inquiry may lead to admissible evidence concerning the defense in the instant case; compulsory process must be filed with the consumer agency of the state in order to ascertain if information has been filed with that agency which would lead to admissible evidence; similar inquiry must be made of the local consumer protection agency for the same reason; compulsory process must

be used with the surgeon general of the United States to ascertain if any material is present which might lead to admissible evidence; compulsory process must be lodged against the local police department in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be used against the local sheriff's department in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be used against the state police department in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be used against the FBI in order to ascertain whether any information is available that would lead to admissible evidence in the instant situation; compulsory process must be filed with the coroner in order to ascertain whether admissible evidence may exist to aid in the instant defense; compulsory process must be used to obtain the name and address of any doctor who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any nurses who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any intake clerks who had performed services at the Center over the

last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any orderlies who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any medical aids who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any nurses aids who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used to obtain the name and address of any guard services who had performed services at the Center over the last 10 years, in order to ascertain from that person if facts exist which may lead to admissible evidence; compulsory process must be used with the Center in order to ascertain who was present at the Center on the day in question in order to ascertain if an abortion that was going to take place did not take place; compulsory process must be used against the Center for the production of any of its records indicating the death of a mother during the abortive process; compulsory process must be used against the Center to ascertain if women change their minds so that a person is alive today that would not be alive had the women not change their mind; compulsory process must be used against the Center

to determine if any botched abortions took place; compulsory process must be used against the Center to determine whether the age of the fetus is such that it might lead to admissible evidence in the instant case; compulsory process must be filed against the Center in order to obtain the names and address of those persons who failed to have an abortion, as that might reasonably lead to admissible evidence; compulsory process must be utilized to obtain the names and addresses of current directors in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process must be utilized to obtain the names and addresses of former directors in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process must be utilized to obtain the names and addresses of officers in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process must be utilized to obtain the names and addresses of former officers in order that they be interrogated to see if information may be available which leads to admissible evidence in the instant case; compulsory process should be served upon physicians who have taken part in the abortion procedure at the Center in order to ascertain if any of the abortions might lead to evidence that is admissible in the instant proceeding; compulsory process must be filed against the Center concerning any complaints made against the Center which might lead to admissible

evidence in the instant proceeding; compulsory process must be filed against the Center in order to ascertain if any law suits have been filed against the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the Center concerning any complaints made against the state agency which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the state agency in order to ascertain if any administrative claims have been filed against the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the Local Agency concerning any complaints made against the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be filed against the local agency in order to ascertain if any law suits have been filed against it concerning the Center which might lead to admissible evidence in the instant proceeding; compulsory process must be lodged against the Center in order to determine which personnel of the Center should be produced for deposition purposes with a view towards information being obtained that would lead to admissible evidence; compulsory process must be issued against the Center in order to obtain the names of all persons who were present at the Center on the day in question in order that inquiry might be made to see if any admissible evidence is available, for example, a 3 year old child is alive today who would not have been, but for the defendant in the instant case. That is the type of factual predicate which must be produced by

Paul Jennings Hill should not have been permitted to waive his Sixth Amendment right to counsel, without the judge conducting a detailed inquiry into, Hill's sole defense to the crimes with which he was charged, and in which the Record shows the Judge knew Hill's only defense was justification as set forth in Fla. Stat. § 776.012 (1993). The judge, under both Faretta and Florida Rule 3.111(d) should have inquired of what Hill thought he was giving up when he wanted to proceed pro se. That was not done. Because it was not done, Hill's Sixth Amendment Rights have been violated and his convictions should be vacated and a new trial ordered. There is not a shred of evidence that Hill "competently and intelligently" waived his Constitutional right to assistance of counsel, Faretta, Id. at 814. Nor is there a shred of evidence that a "thorough inquiry was made into both Hill's comprehension and understanding"; nor is there a shred of evidence that Hill was "able to make an intelligent and understanding choice because of the...nature and complexity of the case."

As set forth in Faretta, Id. at 818, "In short, the Amendment constitutionalizes the right in an adversary criminal trial to make a defense as we know it." Certainly, that did not take place in the instant case. Indeed, the admonition in Faretta, Id.

Compulsory legal process in order to lay the required factual predicate. Respectfully, a pro se is unable to do that.

820, n. 15 "We do not suggest that this right arises mechanically from a defendant's power to waive the right to the assistance of counsel." Respectfully, the Petitioner's waiver is such a case that this Honorable Court foresaw might occur and has occurred <u>against</u> this Court's admonition.

It is respectfully submitted that to permit Hill to proceed without counsel, in fact and in law, particularly because of his non-participation in the case amounted to a plea of guilty, and he did not want to plead guilty.

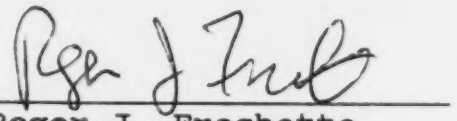
The Supreme Court ruled that the judge did not err in granting the State's Motion in Limine, but that Court seems to have confused the defense of necessity with the defense of justification, and cited necessity cases for its ruling that it was not error to grant the motion in limine, specifically finding that after the State rested Hill repeated his desire to present the defense afforded in § 776.012 Florida Statutes (1993), the justification statute. As appears on [A196 and A200], immediately after Hill stated he was not able to argue, the judge granted the state's motion in limine verbally, and then on October 26, 1991 signed an order so stating. As appears on page 232 of the Record.

In sum, the Florida Supreme Court concluded that the inquiry in this case complied with both <u>Faretta</u> and Rule 3.111(d), despite the fact that the record proves that the Florida Supreme Court's holding on this seminal issue requires reversal as <u>the Record [as to the Faretta issue, is quoted in its entirety in the appendix] proves no such</u>

inquiry was made as there was no compliance with Faretta or with the more stringent Florida Rules of Criminal Procedure 3.111(d).

Hill did not receive justice in this case; Hill was not afforded his constitutional rights, and no man should die under these Constitutional deprivations.

RESPECTFULLY SUBMITTED,

BY 

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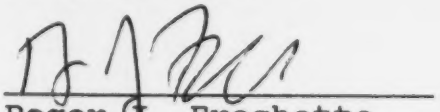
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished via U.S. Mail to Richard Martell, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301; Thomas A. Horkan, Jr., Esq., Post Office Box 1638, Tallahassee, Florida 32302; James Joseph Lynch, Esq., Post Office Box 336, Sacramento, California 95812-0336; and a copy mailed to Appellant, Mr. Paul J. Hill, #459364, Florida State Prison, P.O. Box 181, R-2-S-6, Starke, Florida, 32091 on this 4th day of June, 1997.



Roger J. Frechette